

**Part 13—Investigative and Enforcement Procedures**

This change incorporates Amendment 13-27, Rules of Practice for Federally-Assisted Airport Proceedings, adopted October 8 and effective December 16, 1996. This amendment adds a new paragraph (d) to § 13.3.

Bold brackets enclose the newly added material. The amendment number and effective date appear in bold brackets at the end of the section.

**Page Control Chart**

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Suggest filing this transmittal at the beginning of the FAR. It will provide a method for determining that all changes have been received as listed in the current edition of AC 00-44, Status of Federal Aviation Regulations, and a check for determining if the FAR contains the proper pages.



The rule establishes new procedures to be implemented nation-wide. The procedures cover certain civil penalty cases against individuals submitting dangerous or deadly weapons for screening at airport checkpoints or in checked baggage. The rule will apply only to those cases that facially appear to be simple and are factually straightforward, and that are uncomplicated to process. The rule delegates authority to program office Division and Deputy Division managers to initiate legal enforcement actions and reduces the number of documents issued in these actions. The rule is intended to streamline the agency's civil penalty enforcement process for certain violations by processing these actions within reduced time frames.

#### *Costs*

There will be no costs associated with this rule because it consists only of changes to agency rules of procedure or practice in part 13 of the FAA's regulations. The changes do not impose any new economic requirements on the affected parties.

#### *Benefits*

The streamlined procedures will reduce the number of documents to be served upon individuals. Additionally, this rule will reduce the time between the violation and the processing of the enforcement action.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA. Small entities are defined as independently owned and operated small businesses and small not-for-profit organizations. Because this rule will directly affect certain individuals (who are not defined as entities), the rules will not have a significant economic impact on a substantial number of small entities.

#### **International Trade Impact Assessment**

Because the rule only will affect certain individuals, it will not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services to the United States.

#### **Federalism Implications**

The rule will not have substantial direct effects on the states, on the relationship between the national government and that of any state, or on the distribution of power and responsibilities among the various levels of government. The respondents affected by the amendments are private citizens, not state governments. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have federalism implications to warrant the preparation of a Federalism Assessment.

#### **Paperwork Reduction Act**

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

#### **Conclusion**

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a significant regulatory action under Executive Order 12866. This rule is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, this

## **Amendment 13-27**

### **Rules of Practice for Federally-Assisted Airport Proceedings**

**Adopted: October 8, 1996**

**Effective: December 16, 1996**

**(Published in 61 FR 53998, October 16, 1996)**

**SUMMARY:** This rulemaking establishes rules of practice for filing complaints and adjudicating compliance matters involving Federally-assisted airports. The rule addresses exclusively airport compliance matters arising under the Airport and Airway Improvement Act (AIA) of 1982, as amended; certain airport-related provisions of the Federal Aviation Act of 1994, as amended; the Surplus Property Act, as amended; predecessors to those acts; and regulations, grant agreements, and documents of conveyance issued or made under those acts. The rule is intended to expedite substantially the handling and disposition of airport-related complaints.

**FOR FURTHER INFORMATION CONTACT:** Barry Molar or Frank J. San Martin, Airports Law Branch (AGC-610), Office of the Chief Counsel, (202) 267-3473, Federal Aviation Administration, (FAA), 800 Independence Avenue, SW., Washington, DC 20591.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

A Notice of Proposed Rulemaking (NPRM) for this rulemaking was issued on June 9, 1994 (59 FR 29880). The NPRM proposed to amend the FAA's existing complaint and adjudication procedures, 14 CFR part 13, "Investigative and Enforcement Procedures," to remove from the coverage of part 13 the airport-related matters that will be handled under the new part 16. Certain disputes between U.S. and foreign air carriers and airport proprietors concerning the reasonableness of fees imposed by airport proprietors are not covered by the rule, but by 14 CFR part 302, subpart F, pursuant to § 113 of the Federal Aviation Act of 1994 (FAA Act), Public Law No. 103-305 (August 23, 1994), 49 United States Code (U.S.C.) 47129.

On September 16, 1994, the FAA published a notice to withdraw subpart J of the proposed rule, subpart J contained special procedures for handling airport fee complaints by air carriers (59 FR 47568). The withdrawal became necessary with the passage of § 113 of the FAA Act, which contained specific provisions for airport fee complaints by air carriers that differed from, and were inconsistent with, subpart J. The withdrawal notice also extended the comment period for the remainder of the NPRM, subparts A through I, to December 1, 1994 (59 FR 47568).

##### **Discussion of Comments**

Sixteen commenters responded to the NPRM. Commenters included the Air Freight Association; Air Line Pilots Association (ALPA); Air Ottawa Flying Service, Inc.; Aircraft Owners and Pilots Association (AOPA); Airports Council International-North America (ACI-NA); American Car Rental Association (ACRA); Hawkins, Delafield & Wood; Hogan & Harston; Maryland Aviation Administration; Melbourne Airport Authority; National Association of State Aviation Officials (NASAO); National Business Aircraft Association, Inc. (NBAA); National Air Transportation Association (NATA); Newton & Associates, Inc. (NAI); Regional Airline Association (RAA); and the United States Parachute Association (USPA).

A number of commenters address issues concerning who should be able to file a complaint under new part 16. ACI-NA strongly supports limiting a complainant to a person "directly and substantially affected by any alleged non-compliance," under proposed § 16.23. Otherwise, ACI-NA argues, proceedings could be initiated by persons making only minimal use of an airport, burdening both the respondent and the FAA with the time and expense of administrative proceedings. AOPA states it is concerned that, under proposed § 16.23, an association would not have standing to file a complaint on behalf of its individual members. ACRA requests clarification that a nonaeronautical user of an airport, such as a car rental company, could file a complaint under part 16.

The final rule adopts the "directly and substantially affected" standard of the NPRM, with a special applicability provision for cases where review diversion is alleged. Under § 16.23(a) of the final rule, a person directly and substantially affected by any alleged noncompliance may file a complaint with the Administrator. Under § 16.3 of the final rule, a "complaint" is defined as "a written document . . . filed with the FAA by a person directly and substantially affected by anything allegedly done or omitted to be done . . . in contravention of any provision of any Act, as defined in this section." Complaints by persons not "directly and substantially affected" by respondent's alleged noncompliance will be subject to dismissal with prejudice under part 16.

Persons alleging revenue diversion by an airport, as defined in 49 U.S.C. 47107(b), that do business with, and pay fees or rents to, the airport, are considered in the final rule to be directly and substantially affected by the alleged revenue diversion for the sole purpose of having standing to file a revenue diversion complaint under part 16. This special applicability provision for complaints of revenue diversion is necessary because revenue diversion principally affects the United States as the grantor of the federal airport funds allegedly diverted. However, entities that do business on the airport and pay fees to the airport have some interest in alleging revenue diversion because their payments constitute airport revenue.

An association will have to meet the same "directly and substantially affected" standing requirement individually, but will be able to file a part 16 complaint as a representative of its members who are "directly and substantially affected" by an act or omission of respondent.

The standing requirement is necessary to assure that scarce agency resources are devoted to matters in which the complainant's interest is sufficient to justify the burden of processing a complaint under part 16. Parties who meet part 16 standing requirements may be represented by duly authorized representatives.

Nonaeronautical users of airports are subject to the same "directly and substantially affected" standard as aeronautical users, and could foreseeably have standing to file a complaint under part 16. For example, an airport duty-free shop could have standing to file a part 16 complaint alleging revenue diversion, and an airport concession that is a disadvantaged business enterprise (DBE) could have standing to file a part 16 complaint alleging non-compliance with the applicable DBE regulation. However, most of an airport's obligations are intended for the benefit of aeronautical users. A complaint alleging that an airport operator's treatment of a nonaeronautical user violates such obligation would be dismissed even though the nonaeronautical user was directly and substantially affected by the alleged practice. For example, the assurance against unjust discrimination by an airport operator only applies to aeronautical users, so a complaint by a nonaeronautical user alleging unjust discrimination by an airport operator would be dismissed.

Notwithstanding, the standing requirement, complaints that are dismissed because complainant lacks standing under part 16 may be referred by the FAA to the appropriate FAA region for consideration under Subpart D, Special Rules Applicable to Proceedings Initiated by the FAA.

#### *Pre-Complaint Resolution*

Most commenters approve of the proposed requirement in § 16.21, that a person engage in good faith efforts to informally resolve a disputed matter, directly with the person or entity in alleged noncompliance, before filing a complaint. ACI-NA supports the proposed rule but is concerned that the mention

(ADO), or FAA Regional Airports Division, may be asked by the parties to assist them in resolving the dispute informally. That change is intended to make the local airports office available to mediate a dispute, and reflects the FAA's experience. In many cases, the involvement of the FAA ADO or regional airports division can facilitate informal resolution. Allegations of revenue diversion, however, may not lend themselves to full resolution in the pre-complaint process unless the proposed resolution addresses the total amounts allegedly diverted by the airport. Nevertheless, a complainant must show that informal resolution was attempted.

### *Hearing*

Section 16.31(d) provides the respondent with the opportunity for a hearing if the initial determination finds the respondent in noncompliance and proposes the issuance of a compliance order and an opportunity for a hearing required by statute. In all other cases no opportunity for a hearing is provided, except at the discretion of the agency.

The law firm of Hogan & Hartson proposes a fact-finding hearing before the initial determination is issued in order to develop the factual record. This recommendation is not adopted in the final rule.

Before issuing the initial determination, the FAA engages in the process of investigating a complaint. While complainants are entitled to having their complaints investigated, they do not have a property interest sufficient to require an oral evidentiary hearing as part of that investigation, even when the investigation leads to a dismissal of a complaint.

A respondent may be entitled to a hearing in some cases before the FAA takes adverse action. However, § 16.31(d) provides an opportunity for a hearing in those cases after the initial determination is made and before any final agency action is taken. There is no need to provide a respondent with an additional oral evidentiary hearing during the investigatory stage. Furthermore, the factual record will be developed by the supporting documents that are required to be submitted with each pleading under § 16.23, as by any additional information submitted by the parties or developed through informal investigation under § 16.29.

Several commenters argue that, contrary to § 16.203(b)(1), which provides in the NPRM that the respondent and the agency are the only parties to the post-initial determination hearing, the complainant should also be a party to the hearing. The NBAA argues that a complainant should be a party to the hearing because the complainant's participation will help develop the record of the case. NATA and Air Ottawa Flying Service, Inc., argue that nonhearing party status for a complainant deprives the complainant of due process of law because the complainant may have property interests at stake.

The final rule revised § 16.203(b)(1) to allow complainant to be a party to a hearing along with the respondent and the agency. Under § 16.31(d), a case proceeds to a hearing only after the FAA has found against the respondent in an initial determination that proposes the issuance of a compliance order. Thus, at the hearing the FAA has the burden of proof to establish the validity of its initial determination, including the proposed order of compliance under § 16.109. The respondent is a party to the hearing who seeks reversal of the FAA's initial determination. Although, a complainant's status as an airport user alone does not give rise to a sufficient property interest to justify party status as a matter of right, party status for the complainant will permit it to have an opportunity to assist in the development of the factual record as pointed out by NBAA. In addition, providing automatic party status will avoid burdening the hearing officer and parties with routine requests for intervention by complainant. The rule provides the hearing officer with ample powers to control the conduct of the hearing and to assure that complainant's participation does not unduly delay the proceedings.

As noted in the NPRM, in the case in which an adjudicatory hearing would be held (under § 519 of the AAIA or § 1002 of the FAA Act), the hearing procedures are intended to permit the FAA to complete compliance hearings within 180 days, while assuring that a respondent receives a fair hearing and an opportunity to present evidence and argument to support its position. Section 519 specifies that the FAA may temporarily withhold new grants.

independent.

Further, § 519 by its terms requires the FAA to provide notice and “an opportunity for hearing” before imposing certain sanctions. The simple requirement for a hearing, without more, has been held not to constitute “an adjudication required by statute to be determined on the record after opportunity for an agency hearing,” within the meaning of § 554 of the Administrative Procedure Act (APA). *See, e.g., Friends of the Earth v. EPA*, 966 F.2d 690, 693 (D.C. Cir. 1992); *St. Louis Fuel and Supply Co., Inc. v. FERC*, 890 F.2d 446, 448 (D.C. Cir. 1989). Accordingly, part 16 is not required by the APA to include all of the provisions of §§ 554, 556 and 557 of the APA. In particular, the requirement that administrative law judges serve as hearing officers does not apply.

In the interests of assuring a fair hearing, however, part 16 includes many of the elements required by §§ 554, 556 and 557 of the APA. For example, the hearing officer is required to issue an initial decision; *ex parte communications* are prohibited; separation of the prosecutorial and decision-making functions are required; and the hearing officer has virtually all of the authority specified in § 556(c).

#### *Intervention*

AOPA and NBAA comment that the intervention provisions of § 16.207 are too restrictive and give the hearing officer too much discretion in admitting a new party to a hearing. As explained earlier, a part 16 hearing is to a large extent a proceeding in which the FAA acts as a prosecutor seeking an order of compliance under § 16.109 against respondent within the statutory time limits for issuing such actions. Furthermore, complainant will under the final rule be a party to the hearing. For these reasons, intervention in such a proceeding should only be allowed if it will not unnecessarily broaden the issues, or cause delay, and, if the person requesting intervention has interests that need to be protected.

#### **Analysis of the Provisions of the Final Rule**

After careful review of the available data, including the comments received, the FAA has determined to adopt this proposed rule with the changes described previously.

#### *Subpart A—General Provisions*

Subpart A includes provisions of general applicability to proceedings brought under part 16, definitions of terms used in the regulation, and a provision on separation of functions.

The final rule modifies proposed § 16.1(a) to exclude from the coverage of part 16 disputes between U.S. and foreign air carriers and airport-proprietors concerning the reasonableness of airport fees now covered by 14 CFR part 302, as mandated by Congress in the FAA Act, Public Law No. 103-305 (August 23, 1994).

Proposed § 16.1(d) is modified to specify that part 16 applies to investigations initiated by the FAA, as well as complaints filed with the FAA on or after the effective date of the rule.

The definitions in § 16.3 are, for the most part, derived from the definitions of like or similar terms in 14 CFR part 13. The term “agency employee” defined as any employee of the Department of Transportation, was added to indicate that other offices within the Department of Transportation may assist the FAA in part 16 cases.

The title of “Assistant Administrator for Airports” in the definitions section and throughout the text of the rule has been changed in the final rule to “Associate Administrator for Airports” to reflect the correct title for this FAA official, as changed by a recent agency reorganization.

The term “Director,” defined as the Director of the Office of Airport Safety and Standards, was added to the definitions section and to the text of the rule. The “Director” replaces the “Assistant Administrator” as the decisionmaker of the initial determination without a hearing under § 16.31, as discussed more fully herein.

more closely to current practice in deciding complaints regarding airport compliance.

The term "Presiding officer" was deleted from the definitions section because it was referred to only in subpart J, which was withdrawn.

The final rule contains no changes to the separation of function section, § 16.5, except that "Associate Administrator" replaces "Administrator" in § 16.5(b) and "FAA decisionmaker" in § 16.5(c).

Separation of functions is not required by statute because hearings under part 16 are not subject to APA hearing requirements; however, the separation is provided to promote confidence in the impartiality and integrity of decisions under the new procedures. Separation of prosecutorial and adjudicatory functions will be provided from the time the Director's determination is issued in all cases in which an opportunity for hearing is provided, including cases in which the respondent waives hearing and appeals the Director's determination in writing to the Associate Administrator. When separation applies, the Director will be considered as performing the investigatory and prosecutorial function and will not participate in the decision of the Associate Administrator or hearing officer.

#### *Subpart B—General Rules Applicable to Complaints, Proceedings, and Appeals Initiated by the FAA*

This subpart applies to all phases of the investigations and adjudications under this part.

The provisions governing filing and service of documents, computation of time, and motions (§§ 16.13, 16.15, 16.17, and 16.19), are based on similar provisions in the Federal Rules of Civil Procedure, the Department of Transportation's Rules of Practice in Proceedings (14 CFR part 302), the FAA Rules of Practice in Civil Penalty Actions (14 CFR part 13, subpart G), and the National Transportation Safety Board's (NTSB) Rules of Practice in Air Safety Proceedings (49 CFR part 821). The proposed rule was modified to change the agency address in § 16.13. To insure timely processing and to reflect changes in the organization of the Office of the Chief Counsel "FAA Part 16 Airport Proceedings Docket (AGC-600)" replaces "FAA Enforcement Docket (AGC-10)." The additional 5 days provided after service on a party of a document by mail was changed to 3 days in § 16.17(c). This revision conforms to the "mail rule" used in federal practice under the Federal Rules of Civil Procedure.

#### *Subpart C—Special Rules Applicable to Complaints*

The final rule requires, under § 16.21, a potential complainant to engage in good faith efforts to resolve the disputed matter informally with potentially responsible respondents before filing a complaint with the FAA under part 16. Informal resolution may include mediation, arbitration, use of a dispute resolution board, or other form of third-party assistance, including assistance from the responsible FAA Airports District Office or FAA Regional Airports Division.

Under § 16.21, it will be necessary for the potential complainant or its representative to certify that good faith efforts have been made to achieve informal resolution. To protect the parties and for consistency with Rule 408 of the Federal Rules of Evidence, the certification will not include information on monetary or other settlement offers made but not agreed upon in writing. As explained earlier, under § 16.21(a), the FAA ADO or Regional Airports Division, will be available upon request to assist the parties with informal resolution.

The final rule retains the requirement that a complainant be "directly and substantially affected by any alleged noncompliance" in order to have standing to file a complaint under § 16.23. However, as explained above complainants alleging revenue diversion by an airport will be considered to be directly and substantially affected by the alleged revenue diversion, if complainants do business with the airport and pay fees or rentals to the airport.

To provide a more efficient and expedited process the time periods for filing a reply to the answer and a rebuttal to the reply in § 16.23(e) and (f) were reduced from 15 to 10 days.



rule, the agency is required to issue a Director's determination in 120 days from the due date of the last pleading (*i.e.*, reply or rebuttal). The provision in the NPRM allowing the Director to extend the period for issuing an initial determination by 60 days for good cause was deleted from the final rule in order to further expedite this administrative complaint procedure.

The Director's determination is intended to provide a timely and authoritative indication of the agency's position on a complaint. While the Director's determination can be appealed to the Associate Administrator under § 16.33, the FAA expects that, in many instances, the Director's determination will resolve the issues raised in the complaint to the satisfaction of the parties. In such cases, the parties may find it more beneficial to negotiate a solution based on the FAA's initial position than to continue to litigate the matter.

Under the final rule, the Associate Administrator will issue the final decision on appeal from a Director's determination without a hearing under § 16.33. If the initial determination finds the sponsor in compliance and dismisses the complaint, the complainant may appeal the determination by a written appeal to the Associate Administrator within 30 days. The Associate Administrator is required to issue a final agency decision in an appeal by a complainant within 60, not 30 days of the due date for the reply brief, as proposed in the NPRM. The additional time for issuing a final agency decision was added to the final rule to assure the agency adequate time to review the record, prepare, and issue a final decision.

If the Director's determination contains a finding of noncompliance and the respondent is entitled to a hearing, the determination will provide the sponsor the opportunity to elect an oral evidentiary hearing under subpart F. The procedure for electing or waiving a hearing is set forth in subpart E. If the respondent waives a hearing and instead elects to file a written appeal to the Associate Administrator, a final decision will be issued by the Associate Administrator under § 16.33.

#### *Subpart D—Special Rules Applicable to Proceedings Initiated by the FAA*

Section 16.101 makes clear the FAA's continuing authority to initiate its own investigation of any matter within the applicability of this part without having received a complaint, as authorized by §§ 313 and 1002 of the FAA Act and § 519 of the AAlA.

#### *Subpart E—Proposed Orders of Compliance*

Subpart E contains procedures that provide the respondent an opportunity to file a request for hearing within 20 days after service of the Director's determination if the determination proposes a sanction against the sponsor subject to § 519(b) of the AAlA or § 1002 of the FAA Act. The 20-day period to file a request for hearing was reduced from 30 days in the NPRM in order to provide a more efficient and expedited process. If the respondent elects a hearing, the agency will issue a hearing order.

Alternatively, if the respondent waives hearing and instead files a written appeal (within 30 days), the Associate Administrator will issue a final decision in accordance with the procedures set forth in § 16.33. If the respondent fails to respond to the Director's determination, the initial determination becomes final.

The final rule, based on comments received, includes a new ground for the agency to provide the opportunity for a hearing under § 16.109(a): If the agency proposes to issue an order withholding approval of any new application to impose a passenger facility charge pursuant to § 112 of the FAA Act, 49 U.S.C. 47111(e). That new statutory section creates additional enforcement mechanisms against illegal revenue diversion including the withholding of a new application to impose a passenger facility charge. The statute requires the FAA to provide an opportunity for hearing before imposing this sanction.

The opportunity for a hearing by the agency under part 16 is limited to those cases where there is a statutory requirement to offer the opportunity for a hearing before the FAA takes a particular action, or specific cases in which the FAA elects to offer a hearing.

oral examination of witnesses are in dispute, the hearing may be limited to submission of briefs and oral argument.

In the hearing, the agency attorney will represent the agency's position before the hearing officer and will have the same status as any other representative of a party. The rule includes commonly used adjudicatory procedures, such as representation of the parties by attorneys, intervention, participation by non-parties, pretrial procedures and discovery, the availability of compulsory process to obtain evidence, and procedures for use at the hearing. These provisions are intended to provide the parties with a reasonable opportunity to prepare their cases, while allowing the process to be completed expeditiously. To assure an expeditious hearing process, paragraph (b) was added to § 16.213, Discovery, to emphasize the hearing officer's authority and duty to limit discovery wherever feasible.

The final rule made the following clarifications and corrections to the subpart based on comments received. The final rule added "or notice of investigation" to § 16.201(1) to clarify that the provisions of subpart F may apply to proceedings initiated by the FAA under subpart D. The final rule deleted an incorrect citation in § 16.203(a)(2) and replaced it with a citation to § 16.13.

In the NPRM, the last phrase in proposed § 16.209(d) cited § 519(b) of the AAIA. The citation to the AAIA was included because the AAIA provision contains the 180-day time limitation for a determination which could affect the length of extensions of time granted under part 16. (Although, at this time, the FAA does not foresee any circumstances where it would provide for a hearing and § 519(b) of the AAIA would not be applicable, in a case not covered by § 519(b), an extension of time by the hearing officer for any reason could extend all of the due dates beyond the 180-day time limitation.) This provision is being modified in the final rule to clarify this point.

The provisions of § 16.233 on evidence, in part, are to permit the hearing officer to exercise control over the hearing. Contrary to the suggestion of one commenter, they are not intended to authorize the hearing officer to preclude all cross-examination of a witness.

In keeping with the time limitations imposed by § 519(b) of the AAIA, § 16.235(a) of the final rule retains the provision permitting the hearing officer to allow written argument during the hearing only if the hearing officer finds that such argument would not delay the hearing. Parties may make their arguments in posthearing briefs under § 16.235(b).

#### *Subpart G—Initial Decisions, Orders and Appeals*

Subpart G provides procedures for issuance of initial decisions and orders by hearing officers, appeals of the initial decision to the Associate Administrator for Airports, and issuance of consent orders.

Section 16.241 governs procedures and time frames for initial decisions and administrative appeals based on 14 CFR 13.20(g)–(i). However, shorter time periods are provided to accommodate the time limits of § 519 of the AAIA. In appeals from initial decisions of hearing officers, under § 16.241(c) and 16.241(f)(2), the Associate Administrator must issue the final agency decision within 30 days of the due date of the reply. This provision insures that the final agency decision is issued within the 180-day time period of § 519.

In addition, the rule includes a provision for *sua sponte* review of an initial decision by the Associate Administrator, consistent with the practice under 14 CFR 302.28(d).

Section 16.243 governing disposal of cases by consent orders is derived from 14 CFR 13.13.

As explained above, the final rule replaced all references to the "FAA decisionmaker," though technically correct, with the "Associate Administrator," to avoid confusion and clarify. The ultimate decisionmaker in part 16 proceedings, with or without hearings, is the Associate Administrator for Airports for the reasons previously given.

*Subpart J—Alternative Procedure for Certain Complaints Concerning Airport Rates and Charges*

As explained above, subpart J of the proposed rule, containing special procedures for the handling of airport fee complaints by U.S. and foreign air carriers, was withdrawn on September 16, 1994 (59 FR 47568).

**Regulatory Evaluation Summary**

*Introduction*

This regulatory evaluation examines the costs and benefits of the final rule concerning Rules for Federally-Assisted Airport Proceedings. The rule establishes rules of practice for filing complaints and adjudicating compliance matters involving Federally-assisted airports. The rule is intended to expedite substantially the handling and disposition of airport-related complaints. Since the impacts of the changes are relatively minor this economic summary constitutes the analysis and no regulatory evaluation will be placed in the docket.

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule is "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade.

*Costs And Benefits*

This final rule adopts a new procedure for the filing, investigation, and adjudication of complaints against airports for violation of certain statutes administered by the FAA. The new procedures will substitute for existing procedures under 14 CFR part 13. There are no intended safety benefits that result from this rule. The intended advantages of the rule are in the form of increased cost effectiveness and timeliness in resolving complaints. The rule will use FAA resources better and result in modest cost savings.

About 30 investigations are initiated per year due to complaints filed with the FAA. Each investigation takes an average of 3 years before a ruling is issued. The typical investigation requires a field investigation, an initial review by the FAA's Office of Airports Safety and Standards, and a legal review by an attorney in the Office of Chief Counsel. A GS-12 (step 5) employee requires 30 hours to complete the field investigation, a GS-13 (step 5) requires 30 hours to complete the initial review, and a GS-14 (step 5) employee requires 20 hours to complete the legal review. The average cost per investigation is \$3,100. (See Table 1.) This number assumes a 30-percent loaded hourly rate for fringe benefits. The annual cost of investigations is estimated to be \$93,000.

Under the new rule, determinations will be made without the need for a field investigation. The FAA will be able to decide the merits of the case by looking at the record solely. The field investigation is expected to require 4 hours of the GS-12 (step 5) employee time, mostly to complete the proper forms; the initial review at headquarters is expected to require 40 hours of the GS-13 (step 5) employee's time, and the legal review is expected to remain at 20 hours of the GS-14 (step 5) employee's time. The average cost per investigation is estimated to be \$2,500 and the annual cost of investigations will be \$75,000 (Table 1). The final rule will result in an average cost savings of \$18,000 per year on investigations. Furthermore the FAA estimates that instead of 3 years per investigation, each investigation will now take on average 1 year.

Average annual number of investigations .....							30
Average annual cost of investigations .....							\$93,009
NEW SITUATION							
Field .....	4	GS-12	\$50,388	\$24.14	\$31.39		\$125.55
Initial review at HQ .....	40	GS-13	59,917	28.71	37.32		1,492.90
Attorney review at HQ .....	20	GS-14	70,804	33.93	44.10		882.08
<hr/>							
Average cost per investigation .....							\$2,501
Average annual number of investigations .....							30
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Average annual cost of investigations .....							\$75,016
Savings .....							\$17,993

#### *Conclusion*

The FAA has determined that the final rule would have only moderate economic impacts on the industry, public, or government. The only measurable economic impact the FAA estimates is a slight cost savings to administer airport proceedings due to the utilization of government resources in a more efficient manner. The FAA finds that the proposed rule is cost-beneficial.

#### **International Trade Impact Assessment**

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. There should be no effect on aircraft manufacturers or operators (U.S. or foreign). Therefore, the FAA has determined that the proposed rule would neither have an effect on the sale of foreign aviation products nor services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number or small entities. Based on the potential relief that the rule provides and the criteria contained in FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

#### **Federalism Implications**

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **Paperwork Reduction Act**

This final rule contains no information collection requirements that require approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*)

#### **Conclusion**

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Analysis, the FAA has determined that this final rule is not economically significant under Executive Order 12866. This final rule is considered significant under

Authority: 18 U.S.C. 3002, 47 U.S.C. 100(g), 5121-5124, 46113-46114, 44103-44106, 44702-44703, 44709-44710, 44713, 46101-46110, 46301-46316, 46501-46502, 46504-46507, 47106, 47111, 47122, 47306, 47531-47532.

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### **§ 13.1 Reports of violations.**

(a) Any person who knows of a violation of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act relating to the transportation or shipment by air of hazardous materials, the Airport and Airway Development Act of 1970, the Airport and Airway Improvement Act of 1982, the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or any rule, regulation, or order issued thereunder, should report it to appropriate personnel of any FAA regional or district office.

(b) Each report made under this section, together with any other information the FAA may have that is relevant to the matter reported, will be reviewed by FAA personnel to determine the nature and type of any additional investigation or enforcement action the FAA will take.

(Amdt. 13-17, Eff. 9/30/88)

### **§ 13.3 Investigations (general).**

(a) Under the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*), the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 *et seq.*), the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2201 *et seq.*), the Airport and Airway Improvement Act of 1982 (as amended, 49 U.S.C. App. 2201 *et seq.*), Airport and Airway Safety and Capacity Expansion Act of 1987), and the Regulations of the Office of the Secretary of Transportation (49 CFR 1 *et seq.*), the Administrator may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) For the purpose of investigating alleged violations of the Federal Aviation Act of 1958, as amended the Hazardous Materials Transportation

Act, the Airport and Airway Development Act of 1970, the Airport and Airway Improvement Act of 1982, the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or any rule, regulation, or order issued thereunder, the Administrator's authority has been delegated to the various services and or offices for matters within their respective areas for all routine investigations. When the compulsory processes of sections 313 and 1004 (49 U.S.C. 1354 and 1484) of the Federal Aviation Act, or section 109 of the Hazardous Materials Transportation Act (49 U.S.C. 1808) are invoked, the Administrator's authority has been delegated to the Chief Counsel, the Deputy Chief Counsel, and each Assistant Chief Counsel.

(c) In conducting formal investigations, the Chief Counsel, the Deputy Chief Counsel, and each Assistant Chief Counsel may issue an order of investigation in accordance with subpart F of this part.

[(d) A complaint against the sponsor, proprietor, or operator of a Federally-assisted airport involving violations of the legal authorities listed in § 16.1 of this chapter shall be filed in accordance with the provisions of part 16 of this chapter, except in the case of complaints, investigations, and proceedings initiated before December 16, 1996, the effective date of part 16 of this chapter.]

(Amdt. 13-17, Eff. 4/30/88); (Amdt. 13-19, Eff. 10/25/89); [(Amdt. 13-27, Eff. 12/16/96)]

### **§ 13.5 Formal complaints.**

(a) Any person may file a complaint with the Administrator with respect to anything done or omitted to be done by any person in contravention of any provision of any Act or of any regulation or order issued under it, as to matters within the jurisdiction of the Administrator. This section does not apply to complaints against the Administrator or employees of the FAA acting within the scope of their employment.

(b) Complaints filed under this section must—

(c) of each person who is the subject of the complaint and, with respect to each person, the specific provisions of the Act or regulation or order that the complainant believes were violated;

(4) Contain a concise but complete statement of the facts relied upon to substantiate each allegation;

(5) State the name, address and telephone number of the person filing the complaint; and

(6) Be signed by the person filing the complaint or a duly authorized representative.

(c) Complaints which do not meet the requirements of paragraph (b) of this section will be considered reports under § 13.1.

(d) Complaints which meet the requirements of paragraph (b) of this section will be docketed and a copy mailed to each person named in the complaint.

(e) Any complaint filed against a member of the Armed Forces of the United States acting in the performance of official duties shall be referred to the Secretary of the Department concerned for action in accordance with the procedures set forth in § 13.21 of this part.

(f) The person named in the complaint shall file an answer within 20 days after service of a copy of the complaint.

(g) After the complaint has been answered or after the allotted time in which to file an answer has expired, the Administrator shall determine if there are reasonable grounds for investigating the complaint.

(h) If the Administrator determines that a complaint does not state facts which warrant an inves-

Each person named in the complaint shall be advised which official has been delegated the responsibility under § 13.3(b) or (c) for conducting the investigation.

(j) If the investigation substantiates the allegations set forth in the complaint, a notice of proposed order may be issued or other enforcement action taken in accordance with this part.

(k) The complaint and other pleadings and official FAA records relating to the disposition of the complaint are maintained in current docket form in the Enforcement Docket (AGC-10), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Any interested person may examine any docketed material at that office, at any time after the docket is established, except material that is ordered withheld from the public under applicable law or regulations, and may obtain a photostatic or duplicate copy upon paying the cost of the copy. (Amdt. 13-16, Eff. 5/27/80); (Amdt. 13-19, Eff. 10/25/89)

### **§ 13.7 Records, documents and reports.**

Each record, document and report that the Federal Aviation Regulations require to be maintained, exhibited or submitted to the Administrator may be used in any investigation conducted by the Administrator; and, except to the extent the use may be specifically limited or prohibited by the section which imposes the requirement, the records, documents and reports may be used in any civil penalty action, certificate action, or other legal proceeding.









